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Of Proposed Attorneys for Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re:

ERIC L. SILVA,

Debtor.

Case No. 19-34037-pcm12

**NOTICE – LBR 9019-1(B)**

PLEASE TAKE NOTICE: If you oppose the proposed course of action or relief sought in the attached motion, you must file a written objection with the bankruptcy court within 21 days after the date listed in the certificate of service below. If you do not file an objection, the court may grant the motion without further notice or hearing. Your objection must set forth the specific grounds for objection and your relation to the case.

The objection must be received by the clerk of the court at United States Bankruptcy Court, 1050 SW 6<sup>th</sup> Avenue, #700, Portland, OR 97204, by the deadline specified above or it may not be considered. You must also serve the objection on Nicholas J. Henderson, Motschenbacher & Blattner LLP, 117 SW Taylor Street, Suite 300, Portland, OR 97204, within that same time. If the court sets a hearing, you will receive a separate notice listing the hearing date, time, and other relevant information.

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re:

ERIC L. SILVA,

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Case No. 19-34037-pcm12

DEBTOR'S MOTION TO DETERMINE  
ADEQUATE ASSURANCE TO UTILITY  
COMPANIES

Debtor Eric L. Silva ("Debtor"), hereby moves this Court for an order determining adequate assurance to utility companies, and in support thereof states as follows:

1. On October 31, 2019 (the "Petition Date"), Debtor filed a voluntary petition for relief under Chapter 12 of Title 11 of the United States Code.
2. Debtor has continued in possession of Debtor's property and is continuing to operate and manage Debtor's business pursuant to § 1203 of the Bankruptcy Code.
3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and the standing order of reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper under 28 U.S.C. §§ 1408 and 1409.

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4. In connection with the operation of Debtor's business, Debtor obtains electric, garbage, and water and sewer services (collectively the "Utility Services") from several utility companies (the "Utility Companies"). Attached hereto as **Exhibit 1** to the proposed form of Order granting this motion (**Exhibit A**) is a list of substantially all of the Utility Companies that provide Utility Services to the Debtor as of the Petition Date. The relief requested herein is requested with respect to all Utility Companies providing Utility Services to Debtor and is not limited only to those entities listed on **Exhibit 1**.

5. Pursuant to 11 U.S.C. § 366(c)(2), a Utility Company may alter, refuse, or discontinue utility service to a debtor if within 30 days after the Petition Date the debtor does not provide adequate assurance of payment for post-petition Utility Services in a form that is satisfactory to the Utility Company. Debtor seeks an order determining the appropriate form of adequate assurance of future performance and thereby prohibiting any Utility Company from altering, refusing, or discontinuing Utility Services absent further court order.

6. Debtor proposes to provide adequate assurance of payment in the form of a one-month deposit by Debtor to the Utility Companies which request such a deposit, in the initial amounts set forth in **Exhibit 1**.

7. The one-month deposits made upon request of each Utility Company shall be deemed to be adequate assurance of payment for purposes of 11 U.S.C. § 366 without prejudice to the Utility Companies' right to seek additional or alternative assurance of payment upon further request of this Court. Debtor requests that any Utility Company seeking additional or alternative forms of adequate assurance be prohibited from altering, refusing, or discontinuing Utility Services pending further order of this Court.

8. If Utility Companies are permitted to terminate Utility Services without notice to Debtor or an opportunity for hearing, Debtor's business could be severely impacted resulting in significant losses. The impact on Debtor's business operations, revenue and restructuring efforts could be devastating. Accordingly, it is important that the Utility Services remain uninterrupted.

9. In determining adequate assurance, the Court is not required to give the Utility Companies the equivalent of a guarantee of payment, but must only determine that the utility is not subject to an unreasonable risk of nonpayment for post-petition services. See *In re Caldor, Inc.* - NY, 199 B.R. 1 (SDNY 1996); *In re Santa Clara Circuits West, Inc.*, 27 BR 680, 685 (Bankr. D. Utah 1982); *In re George C. Frye Co.*, 7 BR 856, 858 (Bankr. D. Me 1980).

10. The adequate assurance proposed herein consisting of a cash deposit upon request equal to one month of service for each identified utility will provide satisfactory assurance of payment. Furthermore, requiring a court order prior to the alteration, refusal, or discontinuance of Utility Services by any Utility Company will protect Debtor's business operations from being disrupted in the event a Utility Company unilaterally determines that the proposed adequate assurance of payment is not appropriate.

11. Debtor's proposed assurance of payment is in the best interest of Debtor and Debtor's creditors and will enable Debtor to continue to operate Debtor's business in the ordinary course.

12. Debtor has provided notice of this motion to the Chapter 12 Trustee, to Debtor's secured creditors, all of Debtor's unsecured creditors, and to the Utility Companies identified on **Exhibit 1** attached hereto.

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WHEREFORE, Debtor prays that this Court enter an Order determining that the payment of a deposit equal to one-month's average services upon request by a Utility Company in the amounts set forth in **Exhibit 1** constitutes adequate assurance of payment in accordance with 11 U.S.C. §366 unless and until further order of this Court and prohibiting any Utility Company from altering, refusing, or discontinuing Utility Services without further order of this Court or granting such other form of adequate assurance as the court may deem necessary or appropriate.

DATED: November 5, 2019

MOTSCHENBACHER & BLATTNER LLP

By: /s/Nicholas J. Henderson  
Nicholas J. Henderson, OSB #074027  
Troy G. Sexton, OSB #115184  
Of Proposed Attorneys for Debtor-in-Possession

**EXHIBIT A**  
**PROPOSED ORDER**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re:

ERIC L. SILVA,  
  
Debtor.

Case No. 19-34037-pcm12

ORDER DETERMINING ADEQUATE  
ASSURANCE TO UTILITY  
COMPANIES

THIS MATTER having come before the Court upon Debtor Eric L. Silva's ("Debtor") Motion for Order Determining Adequate Assurance to Utility Companies filed by the Debtor and the matter having come before the Court for hearing and the Court being duly advised in the premises and finding good cause therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED for each Utility Company that requests a deposit, payment of a deposit equal to one-month's average services to each Utility Company, as set forth in **Exhibit 1** attached hereto constitutes adequate assurance of payment in accordance with 11 USC §366 unless and until further order of this Court and all utility companies are hereby prohibited from altering, refusing, or discontinuing utility service without further order of this Court. Provided, however, that this order is without prejudice to any utility company's right to seek additional or alternative assurance of payment upon further request of this Court.

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I certify that I have complied with the requirements of LBR 9021-1(a)(2)(A).

PRESENTED BY:

MOTSCHENBACHER & BLATTNER LLP

By: /s/Nicholas J. Henderson  
Nicholas J. Henderson, OSB #074027  
Troy G. Sexton, OSB #115184  
Of Proposed Attorneys for  
Debtor-in-Possession

**First Class Mail:**

None.

**Electronic Mail:**

The foregoing was served on all CM/ECF participants through the Court's Case Management/Electronic Case File system.



**EXHIBIT 1**

**DEPOSIT AMOUNTS FOR UTILITY COMPANIES**

In re: Eric L. Silva  
Bankr. Case No. 19-34037-pcm12

**EXHIBIT 1**  
**PROPOSED DEPOSIT AMOUNTS FOR UTILITY COMPANIES**

<b>Name of Utility Company</b>	<b>Utility Company Address</b>	<b>Account No.</b>	<b>Type of Service Provided</b>	<b>Total Paid July to September</b>	<b>Proposed Deposit (One Month)</b>
Beaver Water District	24570 U.S. 101 S, Cloverdale, OR 97112	N/A	House Water	\$219.36	\$70.00
Tillamook County PUD	1115 Pacific Ave, Tillamook, OR 97141	36117, 36618, 36619, 36120, 51916, 73873, 76088, 90828, 94971	Electric Service	\$8,130.86	\$2,720.00
Nestucca Valley Sanitary Service	31405 Hwy 101 S, Hebo, OR 97122	1897987	Garbage Service	\$913.70	\$310.00

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